

REFERENCE TITLE: environmental policy act

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House of Representatives
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HB 2653

Introduced by
Representatives Sinema, Ableser, Gallardo, Lujan: Campbell CH, Campbell
CL, Farley, Lopes, Prezelski, Schapira

AN ACT

AMENDING TITLE 49, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING
TO ENVIRONMENTAL POLICY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 49, Arizona Revised Statutes, is amended by adding
3 chapter 10, to read:

4 CHAPTER 10

5 ENVIRONMENTAL POLICY

6 ARTICLE 1. GENERAL PROVISIONS

7 49-1401. Definitions

8 A. IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "AGENCY" MEANS AN ADMINISTRATIVE DIVISION OF THIS STATE THAT IS
10 HEADED BY A PERSON, BOARD OR COMMISSION THAT IS APPOINTED BY THE GOVERNOR.

11 2. "AGENCY ACTION" OR "PROPOSED AGENCY ACTION" MEANS AN ACTION THAT IS
12 ANY OF THE FOLLOWING:

13 (a) UNDERTAKEN DIRECTLY BY AN AGENCY.

14 (b) UNDERTAKEN BY A PERSON OTHER THAN AN AGENCY AND SUPPORTED BY A
15 GRANT, SUBSIDY, LOAN OR OTHER FORM OF FINANCIAL ASSISTANCE FROM AN AGENCY.

16 (c) APPROVED OR PERMITTED BY AN AGENCY.

17 3. "LEAD AGENCY" MEANS THE AGENCY THAT HAS THE PRIMARY STATUTORY
18 RESPONSIBILITY FOR APPROVAL OF ANY PROPOSED ACTION THAT INVOLVES MORE THAN
19 ONE AGENCY.

20 4. "SIGNIFICANT IMPACT ON THE ENVIRONMENT" MEANS A SUBSTANTIAL OR
21 POTENTIALLY SUBSTANTIAL ADVERSE CHANGE IN ANY OF THE PHYSICAL CONDITIONS IN
22 THE AREAS AFFECTED BY THE AGENCY ACTION INCLUDING LAND, AIR, WATER, FLORA,
23 FAUNA, AMBIENT NOISE AND OBJECTS OF HISTORIC OR VISUAL SIGNIFICANCE.

24 49-1402. State clearinghouse; notices; other documents

25 A. A STATE CLEARINGHOUSE FOR NOTICES REQUIRED BY THIS CHAPTER IS
26 ESTABLISHED IN THE DEPARTMENT OF COMMERCE AS AN ADJUNCT TO THE CENTRAL
27 DOCUMENT REPOSITORY THAT IS DESIGNATED AS THE A-95 CLEARINGHOUSE FOR THE
28 DISTRIBUTION OF DOCUMENTS INVOLVING THE NATIONAL ENVIRONMENTAL POLICY ACT OF
29 1969, P.L. 91-190; 83 STAT. 852; 42 UNITED STATES CODE SECTIONS 4321 THROUGH
30 4347). THE DEPARTMENT OF COMMERCE SHALL MAINTAIN THE STATE CLEARINGHOUSE AND
31 SHALL MAKE AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL BUSINESS HOURS ALL
32 NOTICES SENT TO THE STATE CLEARINGHOUSE PURSUANT TO THIS CHAPTER.

33 B. ALL DOCUMENTS PREPARED PURSUANT TO THIS CHAPTER OTHER THAN NOTICES
34 THAT ARE REQUIRED TO BE SENT TO THE STATE CLEARINGHOUSE SHALL BE RETAINED IN
35 THE OFFICE OF THE LEAD AGENCY AND SHALL BE AVAILABLE FOR PUBLIC INSPECTION
36 DURING NORMAL BUSINESS HOURS.

37 49-1403. Notice; form

38 A NOTICE REQUIRED PURSUANT TO THIS CHAPTER SHALL CONTAIN AT LEAST THE
39 FOLLOWING:

40 1. A BRIEF DESCRIPTION OF THE PROPOSED AGENCY ACTION, INCLUDING THE
41 GEOGRAPHIC LOCATION, THE TIME FRAME AND A LIST OF ALL OTHER AGENCIES
42 INVOLVED.

43 2. THE NAME, TITLE AND TELEPHONE NUMBER OF THE PRINCIPAL PROJECT
44 LEADER IN THE LEAD AGENCY FOR THAT PROPOSED AGENCY ACTION.

3. ANY APPROPRIATE CROSS-REFERENCES REGARDING THE PROPOSED AGENCY ACTION.

49-1404. Lead agency

A. THE LEAD AGENCY RETAINS THE FINAL AGENCY AUTHORITY FOR REVIEW AND ACCEPTANCE OF ANY ENVIRONMENTAL REVIEW DOCUMENTS PRESCRIBED BY THIS CHAPTER.

B. IN THE CASE OF A CONFLICT BETWEEN AGENCIES REGARDING THE DESIGNATION OF THE LEAD AGENCY, THE GOVERNOR SHALL DETERMINE THE LEAD AGENCY.

49-1405. Expenses of compliance

A. THE APPLICANT SHALL BEAR THE COSTS FOR THE PREPARATION OF APPLICATIONS, ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS OR OTHER TASKS REQUIRED TO BE PERFORMED BY THE APPLICANT PURSUANT TO THIS CHAPTER.

B. THE AGENCY SHALL BEAR THE COSTS TO THE AGENCY FOR THE REVIEW OF DOCUMENTS OR OTHER AGENCY ACTIONS REQUIRED BY THIS CHAPTER, AND THE COSTS SHALL NOT BE CHARGED TO THE APPLICANT.

C. FOR ACTIONS INVOLVING MORE THAN ONE AGENCY, THE LEAD AGENCY SHALL BEAR THE COSTS FOR COMPLIANCE WITH THIS CHAPTER.

49-1406. Judicial review of agency actions

A. AN AGENCY DECISION MADE PURSUANT TO THIS CHAPTER IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6 ONLY AFTER THE AFFECTED PERSON HAS EXHAUSTED THE LEAD AGENCY'S ADMINISTRATIVE REMEDIES.

B. AN AGENCY DETERMINATION THAT IS MADE BY RULE IS SUBJECT TO JUDICIAL REVIEW AS PRESCRIBED IN TITLE 41, CHAPTER 6.

C. NOTWITHSTANDING ANY OTHER LAW, A PERSON FILING AN ACTION UNDER TITLE 12, CHAPTER 7, ARTICLE 6 TO APPEAL AN AGENCY DECISION UNDER THIS CHAPTER IS REQUIRED TO JOIN AS A DEFENDANT ONLY THE LEAD AGENCY. AGENCIES OTHER THAN THE LEAD AGENCY AND OTHER PERSONS MAY INTERVENE AS OTHERWISE PERMITTED BY LAW.

49-1407. Applicability to political subdivisions; effective date

BEGINNING JULY 1, 2009, COUNTIES, CITIES, TOWNS AND SPECIAL TAXING DISTRICTS MAY ESTABLISH FOR THEIR JURISDICTIONS THE PROGRAM ESTABLISHED BY THIS CHAPTER, MAY ESTABLISH A SIMILAR PROGRAM, MAY ESTABLISH THEIR OWN ENVIRONMENTAL REVIEW PROGRAM OR MAY PERFORM ENVIRONMENTAL REVIEWS ON A CASE-BY-CASE BASIS. ANY ENVIRONMENTAL REVIEW BY A POLITICAL SUBDIVISION SHALL BE STRUCTURED TO AVOID DUPLICATION WITH ANY OTHER LOCAL, STATE OR FEDERAL ENVIRONMENTAL REVIEW.

ARTICLE 2. ENVIRONMENTAL IMPACT REVIEW

49-1421. Outline; categories of further review

A. A PERSON WHO IS AN APPLICANT FOR AN AGENCY ACTION SHALL SUBMIT AN OUTLINE TO THE AGENCY OF THE PROPOSED AGENCY ACTION FOR THE PURPOSE OF DETERMINING WHETHER THE PROPOSED AGENCY ACTION IS SUBJECT TO REVIEW UNDER THIS CHAPTER. THE AGENCY SHALL DETERMINE THE FORMAT OF THE OUTLINE.

B. WITHIN THIRTY DAYS OF RECEIPT OF THE APPLICANT'S COMPLETE AND CORRECT OUTLINE, THE AGENCY SHALL DETERMINE WHICH OF THE FOLLOWING CATEGORIES OF REVIEW APPLY TO THE PROPOSED ACTION AND SHALL NOTIFY THE APPLICANT:

1. THE ACTION IS STATUTORILY EXEMPT FROM THIS CHAPTER AS PRESCRIBED IN SECTION 49-1428 AND NO FURTHER REVIEW IS REQUIRED UNDER THIS CHAPTER.

2. THE ACTION IS UNCONDITIONALLY EXEMPT BY RULE FROM THIS CHAPTER AS PRESCRIBED BY SECTION 49-1429, PARAGRAPH 1 AND NO FURTHER REVIEW IS REQUIRED UNDER THIS CHAPTER.

3. THE ACTION IS CONDITIONALLY EXEMPT BY RULE FROM THIS CHAPTER AS PRESCRIBED BY SECTION 49-1429, PARAGRAPH 2. THE APPLICANT SHALL COMPLY WITH SECTION 49-1423.

4. THE ACTION IS INCLUDED IN THIS CHAPTER BY STATUTE AS PRESCRIBED BY SECTION 49-1431. THE APPLICANT SHALL COMPLY WITH SECTION 49-1422.

5. THE ACTION IS INCLUDED IN THIS CHAPTER BY RULE AS PRESCRIBED BY SECTION 49-1430. THE APPLICANT SHALL COMPLY WITH SECTION 49-1422.

6. THE ACTION IS AN UNLISTED ACTION. FOR THE PURPOSES OF THIS PARAGRAPH, "UNLISTED ACTION" MEANS ANY PROPOSED AGENCY ACTION THAT IS NOT INCLUDED IN PARAGRAPHS 1 THROUGH 5. THE APPLICANT SHALL COMPLY WITH SECTION 49-1423.

49-1422. Environmental assessments; notice; hearing

A. IF AN AGENCY DETERMINES THAT THE PROPOSED ACTION IS INCLUDED BY STATUTE OR INCLUDED BY RULE IN THIS CHAPTER, THE AGENCY SHALL NOTIFY THE APPLICANT AND THE STATE CLEARINGHOUSE THAT AN ENVIRONMENTAL ASSESSMENT IS REQUIRED. THE AGENCY SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR RECEIPT OF WRITTEN COMMENTS ON THE APPLICATION FROM MEMBERS OF THE PUBLIC AND FROM OTHER AGENCIES. PUBLIC COMMENTS SHALL BE SUBMITTED TO THE AGENCY.

B. THE APPLICANT SHALL PREPARE THE ENVIRONMENTAL ASSESSMENT OF THE PROPOSED ACTION, WHICH SHALL BE USED BY THE AGENCY TO DETERMINE WHETHER THE PROPOSED ACTION MAY HAVE POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS, AND SHALL SUBMIT IT TO THE AGENCY. ON RECEIPT OF THE ENVIRONMENTAL ASSESSMENT, THE AGENCY SHALL NOTIFY THE STATE CLEARINGHOUSE AND SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR RECEIPT OF WRITTEN COMMENTS ON THE ENVIRONMENTAL ASSESSMENT FROM MEMBERS OF THE PUBLIC.

49-1423. Unlisted actions; actions conditionally exempt by rule; checklist

FOR AN ACTION THAT IS AN UNLISTED ACTION AS PRESCRIBED IN SECTION 49-1421 AND FOR AN ACTION THAT IS CONDITIONALLY EXEMPT BY RULE AS PRESCRIBED BY SECTION 49-1429, PARAGRAPH 2, THE FOLLOWING PROCEDURES APPLY:

1. ON RECEIPT OF THE COMPLETE AND CORRECT OUTLINE, THE AGENCY SHALL NOTIFY THE STATE CLEARINGHOUSE AND SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR THE RECEIPT OF WRITTEN COMMENTS ON THE APPLICATION.

2. THE AGENCY SHALL REVIEW THE APPLICANT'S OUTLINE FOR THE PROPOSED AGENCY ACTION BY USING A CHECKLIST OF THRESHOLD CRITERIA TO IDENTIFY THOSE PROPOSED AGENCY ACTIONS THAT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT.

3. WITHIN THIRTY DAYS AFTER RECEIPT OF THE OUTLINE, THE AGENCY SHALL COMPLETE ITS REVIEW OF THE OUTLINE AND SHALL DETERMINE WHETHER MORE INFORMATION IS REQUIRED FROM THE APPLICANT OR WHETHER THE AGENCY HAS ADEQUATE INFORMATION FROM THE APPLICANT AND THE PUBLIC TO ISSUE ITS FINDINGS.

4. WITHIN THIRTY DAYS AFTER RECEIVING ANY ADDITIONAL INFORMATION FROM THE APPLICANT, THE LEAD AGENCY SHALL ISSUE ITS FINDINGS.

49-1424. Findings; conditions

A. AFTER REVIEWING THE APPLICANT'S OUTLINE AS PRESCRIBED BY SECTION 49-1423 ON THE ENVIRONMENTAL ASSESSMENT PREPARED AS PRESCRIBED BY SECTION 49-1422 AND ANY COMMENTS RECEIVED ON THE PROPOSED AGENCY ACTION, THE AGENCY SHALL ISSUE ONE OF THE FOLLOWING:

1. A FINDING THAT NO SIGNIFICANT IMPACT ON THE ENVIRONMENT WILL RESULT FROM THE AGENCY ACTION AS PROPOSED. IF THE AGENCY ISSUES THIS FINDING, THE PROPOSED ACTION IS EXEMPT FROM FURTHER REVIEW AS PROVIDED IN SECTIONS 49-1425 AND 49-1426 AND THE PROPOSED AGENCY ACTION MAY PROCEED.

2. A CONDITIONAL FINDING THAT NO SIGNIFICANT IMPACT WILL RESULT FROM THE AGENCY ACTION AS PROPOSED, BASED ON THE AGENCY'S DETERMINATIONS OF THE APPROPRIATE CONDITIONS. THESE CONDITIONS MAY INCLUDE MANDATORY MITIGATION OF POTENTIAL ENVIRONMENTAL IMPACTS. IF THE AGENCY SUBSEQUENTLY DETERMINES THAT THE APPLICANT HAS COMPLIED WITH THE CONDITIONS OF THE AGENCY'S FINDING, THE PROPOSED ACTION IS EXEMPT FROM FURTHER REVIEW AS PROVIDED IN SECTIONS 49-1425 AND 49-1426 AND THE PROPOSED AGENCY ACTION MAY PROCEED.

3. A FINDING OF A POTENTIAL SIGNIFICANT ENVIRONMENTAL IMPACT RESULTING FROM THE AGENCY ACTION. IF THE AGENCY ISSUES THIS FINDING, THE APPLICANT SHALL COMPLY WITH SECTIONS 49-1425 AND 49-1426.

B. THE AGENCY SHALL SEND NOTICE OF ITS FINDINGS TO THE STATE CLEARINGHOUSE.

49-1425. Draft environmental impact statements; notice; hearing

A. IF AN AGENCY ISSUES A FINDING OF A POTENTIAL SIGNIFICANT ENVIRONMENTAL IMPACT PURSUANT TO SECTION 49-1424, THE AGENCY SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR PUBLIC COMMENT REGARDING THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT AND SHALL SOLICIT ADDITIONAL COMMENT FROM OTHER AGENCIES.

B. THE AGENCY MAY HOLD A PUBLIC HEARING REGARDING THE SCOPE OF THE ENVIRONMENTAL IMPACT STATEMENT.

C. THE APPLICANT SHALL PREPARE A DRAFT ENVIRONMENTAL IMPACT STATEMENT THAT CONTAINS INFORMATION SIMILAR TO THE INFORMATION PRESCRIBED IN SECTION 49-1426 AND SUBMIT IT TO THE AGENCY FOR REVIEW. ON RECEIPT OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY SHALL NOTIFY THE STATE CLEARINGHOUSE AND SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR RECEIPT OF WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.

D. THE AGENCY MAY HOLD A PUBLIC HEARING FOR COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT DURING THE THIRTY DAY PERIOD PRESCRIBED IN SUBSECTION C OF THIS SECTION.

49-1426. Final environmental impact statements: notice:
hearing: effect

A. AFTER RECEIPT OF ALL COMMENTS REGARDING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT, THE APPLICANT SHALL PREPARE A FINAL ENVIRONMENTAL IMPACT STATEMENT THAT ADDRESSES ALL COMMENTS RECEIVED REGARDING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.

B. THE FINAL ENVIRONMENTAL IMPACT STATEMENT SHALL CONTAIN AT LEAST THE FOLLOWING:

1. A COVER SHEET, SUMMARY STATEMENT AND TABLE OF CONTENTS.
2. A DETAILED DESCRIPTION OF THE PROPOSED ACTION.
3. A DESCRIPTION OF THE PURPOSE AND NEED FOR THE PROPOSED ACTION.
4. A DETAILED DESCRIPTION OF REASONABLE ALTERNATIVES TO THE PROPOSED ACTION, INCLUDING THE ALTERNATIVE OF NO ACTION.
5. A DESCRIPTION OF THE AFFECTED ENVIRONMENT, INCLUDING A NONTECHNICAL DESCRIPTION OF THE PHYSICAL LOCATION OF THE AFFECTED ENVIRONMENT.
6. A DESCRIPTION OF THE PROPOSED ACTION'S ENVIRONMENTAL CONSEQUENCES AND CONSTRAINTS THAT ADDRESSES THE FOLLOWING, IF RELEVANT:
 - (a) NATURAL RESOURCES, INCLUDING:
 - (i) GEOLOGY.
 - (ii) WATER RESOURCES.
 - (iii) AIR RESOURCES.
 - (iv) TERRESTRIAL AND AQUATIC ECOLOGY.
 - (v) AGRICULTURE RESOURCES.
 - (b) ENVIRONMENTAL CONSTRAINTS.
 - (c) CULTURAL RESOURCES.
 - (d) PUBLIC HEALTH.
 - (e) USE AND CONSERVATION OF ENERGY.
 - (f) IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES.
 - (g) CUMULATIVE ENVIRONMENTAL IMPACTS.
 - (h) ADVERSE ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED.

C. ON RECEIPT OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT, THE AGENCY SHALL NOTIFY THE STATE CLEARINGHOUSE OF ITS RECEIPT AND SHALL PROVIDE FOR A THIRTY DAY PERIOD FOR RECEIPT OF PUBLIC COMMENTS ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT.

D. AFTER REVIEW OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT AND ANY PUBLIC COMMENTS, THE AGENCY SHALL ISSUE A DECISION ON WHETHER TO PROCEED WITH THE PROPOSED AGENCY ACTION AND SHALL NOTIFY THE STATE CLEARINGHOUSE OF ITS DECISION.

E. NOTHING IN AN ENVIRONMENTAL IMPACT STATEMENT PREPARED AS PRESCRIBED BY THIS SECTION REQUIRES THE DENIAL OR MODIFICATION OF THE PROPOSED AGENCY ACTION.

49-1427. Supplemental environmental impact statement:
definition

IF A FINAL ENVIRONMENTAL IMPACT STATEMENT IS PREPARED FOR A PROPOSED AGENCY ACTION AS PRESCRIBED BY THIS ARTICLE, A SUPPLEMENTAL ENVIRONMENTAL

1 IMPACT STATEMENT IS REQUIRED ONLY IF EITHER OF THE FOLLOWING CIRCUMSTANCES
2 OCCURS:

3 1. SUBSTANTIAL CHANGES TO THE AGENCY ACTION ARE PROPOSED AFTER
4 SUBMITTAL OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT, INCLUDING AN
5 INDIVIDUAL PROPOSED AGENCY ACTION THAT IS WITHIN A PROGRAM-WIDE ENVIRONMENTAL
6 IMPACT STATEMENT AS PRESCRIBED BY SECTION 49-1433, BUT THAT MAY HAVE A
7 SIGNIFICANT IMPACT ON THE ENVIRONMENT THAT WAS NOT INCLUDED IN THE
8 PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT.

9 2. AT THE DISCRETION OF THE DIRECTOR OF THE LEAD AGENCY, NEW
10 INFORMATION BECOMES AVAILABLE. FOR THE PURPOSES OF THIS PARAGRAPH, "NEW
11 INFORMATION" MEANS INFORMATION REGARDING EITHER THE ENVIRONMENTAL EFFECTS OF
12 THE PROPOSED AGENCY ACTION OR THE AGENCY'S EXERCISE OF AUTHORITY OVER THE
13 PROPOSED AGENCY ACTION.

14 49-1428. Exemptions by statute

15 THE FOLLOWING TYPES OF PROPOSED AGENCY ACTIONS OR FACILITIES ARE EXEMPT
16 FROM THIS CHAPTER:

17 1. ACTIONS SUBJECT TO THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
18 (P.L. 91-190; 83 STAT. 852; 42 UNITED STATES CODE SECTIONS 4321 THROUGH 4347)
19 OR PERMITS ISSUED UNDER SECTION 404 OF THE CLEAN WATER ACT AS DEFINED IN
20 SECTION 49-201.

21 2. AGENCY RULEMAKING.

22 3. OFFICIAL ACTS OF A MINISTERIAL NATURE THAT INVOLVE NO EXERCISE OF
23 DISCRETION.

24 4. EMERGENCY ACTIONS IN RESPONSE TO THREATS TO PUBLIC HEALTH OR
25 SAFETY.

26 5. ACTIONS AUTHORIZED BY AN AGENCY BEFORE THE EFFECTIVE DATE OF THIS
27 SECTION.

28 6. ACTIONS TAKEN ON AN APPLICATION SUBMITTED BY A PRIVATE ENTITY TO AN
29 AGENCY BEFORE THE EFFECTIVE DATE OF THIS SECTION.

30 7. INFORMATION COLLECTION, INCLUDING RESEARCH, ENVIRONMENTAL QUALITY
31 AND POLLUTION STUDIES, TRAFFIC COUNTS, MAPPING, ENGINEERING STUDIES, SURVEYS
32 AND SOILS AND SUBSURFACE INVESTIGATIONS, IF THE COLLECTION OF THIS
33 INFORMATION DOES NOT COMMIT THE AGENCY TO UNDERTAKE, FUND OR APPROVE ANY
34 ACTIONS THAT ARE SUBJECT TO THIS CHAPTER.

35 8. LEGISLATIVE PROPOSALS.

36 9. LITIGATION RELATED ACTIVITIES, INCLUDING DECISIONS TO INITIATE,
37 SETTLE OR TERMINATE ACTIONS, DECISIONS TO APPEAL ACTIONS AND ANY ACTIONS
38 UNDERTAKEN PURSUANT TO COURT ORDER.

39 10. ADMINISTRATIVE ENFORCEMENT ACTIONS.

40 11. REPLACEMENT OF A FACILITY, IN KIND, ON THE SAME SITE.

41 12. CONSTRUCTION OF MINOR STRUCTURES ACCESSORY OR APPURTENANT TO
42 EXISTING FACILITIES.

43 13. MAINTENANCE OR REPAIR INVOLVING NO SUBSTANTIAL CHANGES IN AN
44 EXISTING STRUCTURE, FACILITY OR ROADWAY.

1 14. RENEWAL OF A LICENSE, LEASE OR PERMIT OR TRANSFER OF OWNERSHIP OF A
2 LICENSE, LEASE OR PERMIT IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

3 (a) THERE IS NO MATERIAL CHANGE IN PERMIT CONDITIONS.

4 (b) THERE IS NO CHANGE IN THE SCOPE OF PERMITTED ACTIVITIES.

5 (c) THERE HAVE BEEN NO VIOLATIONS OF THE LICENSE, LEASE OR PERMIT
6 CONDITIONS THAT MAY HAVE CAUSED A SIGNIFICANT IMPACT ON THE ENVIRONMENT
7 DURING THE TERM OF THE LICENSE, LEASE OR PERMIT.

8 (d) THERE IS NO DOCUMENTED RECORD OF NEW UNRESOLVED ENVIRONMENTAL
9 PROBLEMS REGARDING THE LICENSE, LEASE OR PERMIT.

10 15. ELECTRIC GENERATION, DISTRIBUTION AND SUBTRANSMISSION FACILITIES
11 OTHER THAN THOSE PRESCRIBED BY TITLE 40, CHAPTER 2, ARTICLE 6.2.

12 16. MANAGEMENT PLANS ADOPTED OR MODIFIED PURSUANT TO TITLE 45, CHAPTER
13 2, ARTICLE 9, EXCEPT FOR AUGMENTATION AND AUGMENTATION ASSISTANCE.

14 17. REQUESTS FOR VARIANCE FROM A MANAGEMENT PLAN AS PRESCRIBED BY
15 SECTION 45-574 AND REQUESTS FOR ADMINISTRATIVE REVIEW OF A MANAGEMENT PLAN AS
16 PRESCRIBED BY SECTION 45-575.

17 18. APPROVAL OF DAM CONSTRUCTION PLANS PURSUANT TO TITLE 45, CHAPTER 6,
18 INCLUDING PLANS FOR ENLARGEMENT OR MODIFICATION OF DAMS.

19 19. REQUIREMENTS TO BREACH, REPAIR OR MODIFY DAMS PURSUANT TO SECTION
20 45-1212.

21 20. APPLICATIONS TO RETIRE IRRIGATION GRANDFATHERED RIGHTS PURSUANT TO
22 TITLE 45, CHAPTER 2, ARTICLE 5.

23 21. WELL CAPPING.

24 22. DETERMINATIONS OF ASSURED WATER SUPPLY AND ADEQUATE WATER SUPPLY
25 ISSUED BY THE DEPARTMENT OF WATER RESOURCES PURSUANT TO TITLE 45, CHAPTER 2,
26 ARTICLE 9 OR SECTION 45-108, INCLUDING APPLICATIONS FOR CERTIFICATES, LETTERS
27 AND SERVICE AREA DESIGNATIONS. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO
28 AFFECT THE ABILITY OF A LOCAL ENTITY TO REQUIRE COMPLIANCE WITH THIS CHAPTER
29 FOR PROPOSED LOCAL AGENCY PROJECTS RELATING TO WATER.

30 23. APPLICATIONS TO APPROPRIATE, CHANGE THE USE OF OR SEVER AND
31 TRANSFER SURFACE WATER PURSUANT TO TITLE 45, CHAPTER 1 IF THE APPLICATION
32 INVOLVES ONE HUNDRED ACRE-FEET OF WATER PER YEAR OR LESS, UNLESS MORE THAN
33 TWENTY PER CENT OF THE PRESENT FLOW WOULD BE DEPLETED BY THE APPLICATION.

34 24. APPLICATIONS FOR GROUNDWATER WITHDRAWAL PERMITS PURSUANT TO TITLE
35 45, CHAPTER 2, ARTICLE 7, OR TO SUBSTITUTE IRRIGATION ACRES PURSUANT TO TITLE
36 45, CHAPTER 2, ARTICLE 4 OR 5, IF THE APPLICATION INVOLVES ONE HUNDRED
37 ACRE-FEET OF WATER PER YEAR OR LESS.

38 25. ACTIONS APPROVED BY THE STATE LAND DEPARTMENT PURSUANT TO TITLE 37,
39 CHAPTER 2, ARTICLE 3.

40 26. ACTIONS THAT ARE APPROVED BY THE STATE LAND DEPARTMENT, THAT HAVE
41 OBTAINED REQUIRED APPROVAL BY A CITY OR A COUNTY AND THAT ARE LOCATED IN
42 THOSE LOCAL JURISDICTIONS THAT HAVE A GENERAL PLAN ONLY IF THE GENERAL PLAN
43 CONSIDERED ENVIRONMENTAL IMPACTS UNDER AN APPLICABLE LOCAL ENVIRONMENTAL
44 REVIEW PROGRAM ADOPTED PURSUANT TO THIS CHAPTER.

1 27. RENEWALS OF EXISTING STATE LAND DEPARTMENT LEASES FOR THE
2 CONTINUATION OF EXISTING USES UP TO THE AUTHORIZED LEVEL OF USE.

3 28. COMMERCIAL HOLDING LEASES WITH THE STATE LAND DEPARTMENT FOR WHICH
4 NO USE OF THE LAND IS AUTHORIZED.

5 29. TRANSFERS OF LAND BETWEEN THE STATE LAND DEPARTMENT AND THE UNITED
6 STATES GOVERNMENT UNDER A DEED OF RELINQUISHMENT OR THROUGH THE EXERCISE OF
7 EMINENT DOMAIN.

8 30. EXCHANGES OF LAND BETWEEN THE STATE LAND DEPARTMENT AND THE UNITED
9 STATES GOVERNMENT THAT HAVE BEEN SUBJECT TO THE NATIONAL ENVIRONMENTAL POLICY
10 ACT OF 1969 (P.L. 91-190; 83 STAT. 852; 42 UNITED STATES CODE SECTIONS 4321
11 THROUGH 4347).

12 31. ISSUANCE OF RIGHTS-OF-WAY BY THE STATE LAND DEPARTMENT THAT HAVE
13 BEEN THE SUBJECT OF REVIEW BY ANOTHER AGENCY PURSUANT TO THIS ARTICLE.

14 49-1429. Exemptions by rule; limitations

15 IN ADDITION TO THOSE EXEMPTIONS PRESCRIBED BY SECTION 49-1428, AN
16 AFFECTED AGENCY MAY ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 TO EXEMPT
17 CERTAIN PROPOSED AGENCY ACTIONS FROM THIS ARTICLE. THOSE RULES SHALL BE
18 LIMITED TO PROVIDING THE FOLLOWING TYPES OF EXEMPTIONS:

19 1. A TOTAL EXEMPTION FOR AGENCY ACTIONS IN THAT AGENCY'S JURISDICTION
20 ONLY IF THE AGENCY DETERMINES BY RULE THAT THE PROPOSED ACTIONS WILL NOT HAVE
21 A SIGNIFICANT IMPACT ON THE ENVIRONMENT OR THAT THE ACTIONS FALL WITHIN A
22 STATUTORY EXEMPTION PRESCRIBED IN SECTION 49-1428.

23 2. A CONDITIONAL EXEMPTION BY CATEGORY FOR CLASSES OF AGENCY ACTIONS
24 THAT NORMALLY DO NOT HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT.
25 INDIVIDUAL ACTIONS IN THIS CATEGORY SHALL BE REVIEWED BY THE AGENCY USING A
26 CHECKLIST OF THRESHOLD CRITERIA TO IDENTIFY THOSE PROPOSED AGENCY ACTIONS
27 THAT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT. AN AGENCY MAY DEVELOP
28 ITS OWN CHECKLIST OF CRITERIA FOR THIS REVIEW IF THE CHECKLIST IS CONSISTENT
29 WITH THIS CHAPTER. IF THE PROPOSED AGENCY ACTION DOES NOT VIOLATE ANY OF THE
30 THRESHOLD CRITERIA ON THE CHECKLIST, THE PROPOSED AGENCY ACTION IS EXEMPT
31 FROM FURTHER REVIEW UNDER THIS CHAPTER.

32 3. AN EXEMPTION FOR A SPECIFIC PROGRAM THAT REQUIRES AGENCY APPROVAL
33 IF THE PROPOSED AGENCY ACTION IS OTHERWISE SUBJECT TO A REVIEW PROGRAM
34 EQUIVALENT TO THIS CHAPTER. A REVIEW PROGRAM IS EQUIVALENT TO THE PROGRAM
35 ESTABLISHED BY THIS CHAPTER IF BOTH OF THE FOLLOWING APPLY:

36 (a) THE PRIMARY MISSION OF THE REVIEW PROGRAM IS PROTECTION OF THE
37 ENVIRONMENT.

38 (b) THE REVIEW PROGRAM REQUIRES THAT THE ENVIRONMENTAL IMPACT OF THE
39 PROPOSED ACTION BE ASSESSED, THAT ALTERNATIVE COURSES OF ACTION BE CONSIDERED
40 FOR EACH PROPOSED ACTION, INCLUDING CONDITIONAL APPROVAL AND THE ALTERNATIVE
41 OF NO AGENCY ACTION, AND THAT AN OPPORTUNITY FOR PUBLIC PARTICIPATION BE
42 AVAILABLE EQUIVALENT TO THAT PROVIDED BY THE PROGRAM ESTABLISHED IN THIS
43 CHAPTER.

44 4. AN EXEMPTION FOR A SPECIFIC REGULATORY PROGRAM THAT WOULD OTHERWISE
45 BE SUBJECT TO THIS ARTICLE BUT THAT REQUIRES THAT THE AGENCY'S DECISIONS BE

1 BASED ON STATUTORY MANDATES THAT PRECLUDE CONSIDERATION OF ENVIRONMENTAL
2 CRITERIA.

3 49-1430. Inclusions by rule; limitations

4 A. AN AGENCY MAY ISSUE RULES PURSUANT TO TITLE 41, CHAPTER 6 THAT
5 INCLUDE AGENCY ACTIONS IN THE PROCESS ESTABLISHED BY THIS ARTICLE. THESE
6 INCLUSIONS MAY BE BY CATEGORY OR OTHERWISE AND SHALL BE CONSISTENT WITH THIS
7 ARTICLE AND THE STATUTORY EXEMPTIONS. AN ENVIRONMENTAL ASSESSMENT SHALL BE
8 CONDUCTED AS PRESCRIBED BY SECTION 49-1422 FOR ALL ACTIONS THAT ARE INCLUDED
9 BY RULE, AND AN ENVIRONMENTAL IMPACT STATEMENT SHALL BE CONDUCTED ONLY IF
10 PRESCRIBED BY SECTION 49-1424.

11 B. THIS SECTION SHALL NOT BE CONSTRUED TO ALLOW AN AGENCY BY RULE TO
12 COMPEL COMPLIANCE WITH THIS ARTICLE FOR A PROPOSED AGENCY ACTION THAT WOULD
13 NOT OTHERWISE BE SUBJECT TO THIS ARTICLE.

14 49-1431. Inclusions by statute; state land department;
15 limitations; construction

16 A. THE FOLLOWING PROPOSED STATE LAND DEPARTMENT ACTIONS ARE SUBJECT TO
17 THIS ARTICLE:

18 1. NEW PLANS OF OPERATION ON MINERAL LEASES AND MINERAL MATERIAL
19 SALES.

20 2. NEW LEASES AND PERMITS OR SALES OF PRESCRIBED LAND FOR RESIDENTIAL,
21 COMMERCIAL, AGRICULTURAL OR OTHER DEVELOPMENT PURPOSES.

22 3. EXCHANGES OF LAND WITH PARTIES OTHER THAN THE UNITED STATES
23 GOVERNMENT.

24 4. ISSUANCE OF RIGHT-OF-WAY FOR A PROJECT THAT HAS NOT BEEN SUBJECT TO
25 AN ENVIRONMENTAL REVIEW CONDUCTED BY ANOTHER AGENCY PURSUANT TO THIS ARTICLE.

26 5. ISSUANCE OF A GRAZING LEASE OR PERMIT FOR LAND THAT HAS NOT BEEN
27 SUBJECT TO A GRAZING LEASE OR PERMIT IN THE PRECEDING FIVE YEARS OR ANY
28 INCREASE IN THE AUTHORIZED CARRYING CAPACITY OF ANY EXISTING GRAZING LEASE OR
29 PERMIT.

30 B. FAILURE TO INCLUDE A PROPOSED AGENCY ACTION IN THIS SECTION SHALL
31 NOT BE CONSTRUED AS AN EXEMPTION FROM THIS ARTICLE FOR ANY PROPOSED AGENCY
32 ACTION.

33 49-1432. Voluntary participation

34 AN AGENCY MAY ELECT TO COMPLY WITH THIS CHAPTER FOR A PROPOSED AGENCY
35 ACTION THAT IS NOT OTHERWISE SUBJECT TO THIS CHAPTER.

36 49-1433. Program-wide environmental impact statements

37 AN AGENCY MAY UNDERTAKE A PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT.
38 A PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT SHALL CONSIDER THE EFFECTS OF A
39 STATEWIDE OR AREA-WIDE PROGRAM, PLAN OR PROCESS. AN INDIVIDUAL AGENCY ACTION
40 IN THE PROGRAM-WIDE ENVIRONMENTAL IMPACT STATEMENT IS EXEMPT FROM SUBMITTING
41 AN ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT ONLY IF THE
42 PROPOSED INDIVIDUAL AGENCY ACTION WILL NOT HAVE A SIGNIFICANT IMPACT ON THE
43 ENVIRONMENT OTHER THAN THOSE IMPACTS ADDRESSED IN THE PROGRAM-WIDE
44 ENVIRONMENTAL IMPACT STATEMENT. IF NOT EXEMPT, A SUPPLEMENTAL ENVIRONMENTAL
45 IMPACT STATEMENT IS REQUIRED AS PRESCRIBED BY SECTION 49-1427.

1 Sec. 2. Purpose

2 A. The legislature finds that the protection of the environment is of
3 vital importance to this state and that this state and its political
4 subdivisions must regulate and serve as models in the effort to protect the
5 human environment and the natural resources of this state. The design and
6 location of projects initiated, funded or authorized by this state and
7 political subdivisions may have substantial direct, indirect and cumulative
8 effects on the environment, but the potentially adverse environmental impacts
9 of projects initiated, funded or authorized by this state or political
10 subdivisions can be reduced or eliminated if those impacts are assessed
11 before the approval of those projects and reasonable and prudent mitigation
12 measures are developed to minimize adverse impacts. Any cost or delay in
13 project review and approval can be minimized by early coordination between
14 all of the participants.

15 B. Based on these findings, the legislature determines that the
16 adoption of an environmental policy act is an appropriate means to protect
17 the human environment and natural resources of this state. The procedures in
18 this act are intended to assist an agency in determining the full potential
19 effects of an agency action. The results of any environmental review are not
20 intended to preclude or mandate any particular agency action.

21 Sec. 3. Effective date

22 This act is effective from and after June 30, 2008.